

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GREGORY P. AND DAVID P.

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Case No. L2005120912
L2005120913

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter at the Harbor Regional Center in Torrance, California, on May 3, 2006.

J.P., Claimants' father, represented claimants G.P. and D.P. (Claimants).¹

Mona Hanna, Esq. represented Harbor Regional Center (HRC or Regional Center.)

The matter was submitted for decision on May 3, 2006.

ISSUE PRESENTED

Shall Claimants be required to attend a psychological assessment to be performed by psychologist Dr. John Cone?

FACTUAL FINDINGS

1. Claimants are two boys, ages eight and six, who are consumers by virtue of their diagnoses of Autism.

¹ Claimant and his family are referred to by their initials or family titles to protect their confidentiality

2. On November 15, 2005, the HRC proposed reducing or eliminating services based on Claimants' failure to attend a psychological assessment with Dr. Cone.

3. On February 27, 2006, the parties appeared for a duly noticed hearing. The hearing date was continued until May 3, 2006 and the below-described Order was issued.

4. On March 1, 2006, the ALJ issued an order, based on the parties' stipulation, which stated, in pertinent part:

a. HRC is entitled to a psychological assessment of both Claimants to assess their progress, developmental levels, and needs.

b. The remaining issue for hearing is regarding who will perform the psychological evaluation.

c. Both parties were ordered to brief the following issues: Does HRC have the sole authority to determine who will conduct the psychological evaluation of Claimants, or does the ALJ have the authority to appoint an independent medical assessor?

5. Both parties presented briefs on the issue. Claimants' father also testified.

6. Claimants' do not dispute that Dr. John Cone is a licensed psychologist qualified to perform a psychological assessment. Claimants' also do not dispute that a psychological assessment is warranted or beyond the statutory authority of HRC. Instead, Claimants' contend that Dr. Cone's opinion as to the necessity of applied behavior analysis therapy (ABA) is predetermined and that his opinion will not be favorable to their two children. Claimants also contend that HRC is improperly using the assessment process as a means of gathering evidence to reduce Claimants' existing services in the future.

7. It was not established that Dr. Cone's opinion on the necessity of ABA never varies. Further, it was not established that HRC is using the assessment process to gather evidence for a future hearing. Assuming *arguendo* that Dr. Cone's opinion on the necessity of ABA is predetermined, this still would not be sufficient to permit the ALJ to disregard the statutory authority which allows HRC to choose the person who will perform the assessments. Again assuming *arguendo* that Dr. Cone's opinion is predetermined, the use of opinionated experts is not uncommon. In fact, experts many times have strong and unyielding opinions that are in sharp contrast to other experts in the same field.

LEGAL CONCLUSIONS AND DISCUSSION

1. HRC is entitled to a psychological assessment of Claimants by licensed psychologist Dr. John Cone. (Welf. and Inst. Code §§ 4642, 4646.5, subd. (a), 4512, subd. (b), and 4643). Code section 4646.5 specifically allows Claimants to provide information to Dr. Cone for inclusion in his assessment. Such information can include information from

Claimants' present service providers. While other Welfare and Institutions Code sections, which Claimants referenced in their brief, refer to the direct involvement of Claimants and their family in the choosing of service providers, implementation of goals, and level of services to be provided, such is not the case with the assessment process. (Factual Findings 4-7.)

2. The Parents are not without a remedy if the HRC proposes to eliminate a service, or services, based on Dr. Cone's assessment. First, they can request a fair hearing on HRC proposed action. At that hearing, Claimants can contest Dr. Cone's opinion and they can present other evidence in support of their position. Second, HRC's brief concedes that Claimants can also request funding to obtain their own psychological assessment. If funding is denied, they can request a fair hearing on that issue. Third, Claimants can also obtain a psychological assessment (at their own expense) of their own choosing to present as, presumably, contrary evidence to the opinion of Dr. Cone. (Welf. And Inst. Code §§ 4705-4715.) Claimants' contend that it would be simpler and more cost-effective to have Claimants examined by an agreed upon assessor. While the parties could agree on such a process, the present statutory scheme does not allow the ALJ to order such a procedure.

ORDER

Claimants Gregory P. and David P. shall each appear for a psychological assessment by Dr. John Cone within 60 days from the effective date of this decision.

IT IS SO ORDERED.

DATED: May____, 2006

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

NOTE: This is a final administrative decision pursuant to Welfare & Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.